STATE OF MICHIGAN

COURT OF APPEALS

JEANETTE MUSE,

Plaintiff-Appellant,

v

LANSING HOUSING COMMISSION,

Defendant-Appellee.

UNPUBLISHED
January 13, 2004

No. 241807
Ingham Circuit Court
LC No. 01-093326-CZ

Before: Zahra, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the grant of summary disposition in defendant's favor in this wrongful discharge case. We affirm.

First, plaintiff argues that the trial court erred in concluding that she did not have a just-cause employment contract with defendant because defendant's handbook and work rules created such legitimate expectation. See *Toussaint v Blue Cross & Blue Shield*, 408 Mich 579, 598; 292 NW2d 880 (1980). We disagree. Rulings on motions for summary disposition are reviewed de novo on appeal. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 490; 579 NW2d 411 (1998).

"At will" is the presumed employment relationship in Michigan. *Lynas v Maxwell Farms*, 279 Mich 684, 687; 273 NW 315 (1937). Merely creating guidelines for a systematic way of dealing with employees' misconduct does not establish just-cause employment rather than at-will employment. *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241-242; 486 NW2d 61 (1992). Where there is nothing in the rules that suggests an employee may only be discharged for cause or that the rules are an exhaustive list upon which termination may be based, the rules alone are insufficient to create a just-cause relationship. *Id*. Here, we find that there is nothing in the work rules suggesting that plaintiff could only be discharged for cause.

First, plaintiff's interpretation of defendant's work rules as requiring a progression moving from counseling through to discharge is unsupported by a reading of the rules. The foreword to the rules states that violations of the work rules "*may* range from verbal counseling through discharge" (emphasis added). Nowhere do the rules state that a disciplinary progression is mandatory for every offense. In fact, many of the rules' disciplinary guidelines recommend that a *first* offense should result in discharge. Further, defendant's policies do not contain language expressly suggesting just-cause employment. Plaintiff, therefore, finds significance in

a provision which states: "Employees are subject to discipline up to and including discharge for violations of the Housing Commission rules and policies, unsatisfactory performance, and other reasons providing just cause for discipline." Although the words "just cause" are present here, any possible effect that could be ascribed to these words is nullified by the handbook's contractual disclaimer in the foreword. See *Lytle v Malady (On Rehearing)*, 458 Mich 153, 166; 579 NW2d 906 (1998); *Biggs*, *supra* at 241.

Plaintiff also argues that the exchange she had with the executive director during her interview created an express contract for just-cause employment. "The starting point in analyzing oral statements for contractual implications is to determine the meaning that reasonable persons might have attached to the language, given the circumstances presented." *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 640; 473 NW2d 268 (1991). The statements must be clear and unequivocal, specific "with regard to duration of employment or grounds for termination," and show "indication of an actual negotiation or an intent to contract for permanent or just-cause employment." *Lytle*, *supra* at 172; *Biggs*, *supra* at 242.

With regard to job security, plaintiff alleges that she asked if it would be a problem that she was leaving a union position to take a non-union position, and the executive director then told her, "As long as you do your work, you won't have no problem." We find the executive director's response similar to the responses in *Rowe*, *supra* at 642, where the plaintiff was told that as long as she sold, she would have a job, and *Rood v General Dynamics Corp*, 444 Mich 107, 123; 507 NW2d 591 (1993), where the plaintiff was told that "unless something was really wrong" he would be there for retirement and that as long as the employer had a truck, plaintiff would be the driver. In both of those cases, the Court held that, considered in context, the statements were insufficient to create a just-cause contract and no reasonable jury could find that they were just-cause contracts. *Rood*, *supra* at 127; *Rowe*, *supra* at 645.

Here, we find that plaintiff's comments merely reflect her concern over the possible residual effects of her previous position as a union steward. There is no indication that she was specifically negotiating for just-cause employment or making specific inquiries regarding grounds for termination. See *Lytle*, *supra*. And likewise, the executive director's response cannot be reasonably deemed a clear and unequivocal statement of job security. See *Biggs*, *supra*.

In sum, the trial court's dismissal of plaintiff's claims was proper because no reasonable jury could find that defendant's policies or work rules, or the statements made to plaintiff during her interview, created a just-cause employment relationship – plaintiff was terminable at will. Because of our determination on this issue, we need not consider defendant's alternative grounds for affirmance.

Next, plaintiff argues that the trial court erred in denying her request to amend her complaint when it determined that the request was too late. We disagree. This Court will not reverse a trial court's decision on a motion to amend absent an abuse of discretion that results in injustice. *Phillips v Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995).

Although leave to amend a complaint is freely given when justice so requires, MCR 2.118(A)(2), it may also be denied for particularized reasons, including undue delay, undue prejudice to the opposing party, or futility. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d

114 (1996). Delay alone is usually insufficient reason to deny amendment unless it also would result in prejudice that would prevent the defendant from having a fair trial because of the lateness. *Knauff v Oscoda Co Drain Comm'r*, 240 Mich App 485, 493; 618 NW2d 1 (2000); *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 343-344; 568 NW2d 847 (1997).

Here, plaintiff did not move to amend her complaint to add a new theory of liability, a violation of the Bullard-Plawecki Employee Right to Know Act, until (1) over a year after her first amended complaint was filed, (2) after the scheduling deadline negotiated for and stipulated to by the parties, (3) after the close of discovery, (4) after the case evaluation hearing, (5) approximately three months before the scheduled trial, and (6) after defendant filed its motion for summary disposition. "A party is not entitled to wait until the discovery cutoff date has passed and a motion for summary judgment has been filed on the basis of claims asserted in the original complaint before introducing entirely different legal theories in an amended complaint." *Weymers v Khera*, 454 Mich 639, 661; 563 NW2d 647 (1997), quoting *Priddy v Edelman*, 883 F2d 438, 446-447 (CA 6, 1989). The trial court did not abuse its discretion in denying plaintiff's motion to amend because defendant would have been prejudiced by plaintiff's unduly delayed amendment.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper